Nos. 14-1418, 14-1453, 14-1505, 15-35, 15-105, 15-119, and 15-191

IN THE

Supreme Court of the United States

DAVID A. ZUBIK, *ET AL.*,

Petitioners,

v.

SYLVIA BURWELL, SECRETARY OF HEALTH AND HUMAN SERVICES, *ET AL.*,

Respondents.

(Additional Captions on Inside Cover)

On Writs of Certiorari to the United States Courts of Appeals for the Third, Fifth, Tenth, and District of Columbia Circuits

BRIEF OF *AMICUS CURIAE* AMERICAN ACADEMY OF PEDIATRICS IN SUPPORT OF RESPONDENTS

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February 17, 2016

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PRIESTS FOR LIFE, *ET AL.*, *Petitioners*,

v.

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, *ET AL.*, *Respondents*.

ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, *ET AL.*, *Petitioners*,

v.

SYLVIA BURWELL, SECRETARY OF HEALTH AND HUMAN SERVICES, *ET AL.*, *Respondents*.

EAST TEXAS BAPTIST UNIVERSITY, *ET AL.*, *Petitioners*,

v.

SYLVIA BURWELL, SECRETARY OF HEALTH AND HUMAN SERVICES, *ET AL.*, *Respondents*.

LITTLE SISTERS OF THE POOR HOME FOR THE AGED, DENVER, COLORADO, *ET AL.*, *Petitioners*,

v.

SYLVIA BURWELL, SECRETARY OF HEALTH AND HUMAN SERVICES, *ET AL.*, *Respondents*.

SOUTHERN NAZARENE UNIVERSITY, *ET AL.*, *Petitioners*,

v.

SYLVIA BURWELL, SECRETARY OF HEALTH AND HUMAN SERVICES, *ET AL.*, *Respondents*.

GENEVA COLLEGE, *Petitioners*,

v.

SYLVIA BURWELL, SECRETARY OF HEALTH AND HUMAN SERVICES, *ET AL.*, *Respondents*.

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INTEREST OF AMICUS CURIAE[1]

The American Academy of Pediatrics ("AAP") was founded in 1930 and is a national, not-for-profit professional organization dedicated to furthering the interests of child and adolescent health. Since AAP's inception, its membership has grown from 60 physicians to over 64,000 primary care pediatricians, pediatric medical subspecialists, and pediatric surgical specialists. Over the past 86 years, AAP has become a powerful voice for child and adolescent health through education, research, advocacy, and the provision of expert advice. AAP has worked with the federal and state governments, health care providers, and parents on behalf of America's children and adolescents to ensure the availability of safe and effective vaccines and contraceptives.

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[1] No person or entity other than Amicus and its counsel made a monetary contribution to the preparation or submission of this brief. No counsel to a party authored this brief in whole or in part. Petitioners and Respondents have consented to the filing of this brief, as reflected in letters filed with the Clerk of Court.

SUMMARY OF ARGUMENT

In *Hobby Lobby*, for-profit employers with religious objections to the Affordable Care Act's contraceptive-coverage requirement challenged that requirement under RFRA. Ultimately, this Court concluded that the government's existing accommodation for non-profit employers—a self-certification form permitting them to "opt out" of the coverage requirement—was a less restrictive means of furthering the government's compelling interest, and one that "[did] not impinge" on the petitioners' religious beliefs. *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2782 (2014). The Court also concluded that the existing accommodation served the government's interests well because "employees would continue to receive contraceptive coverage without cost sharing for all FDA-approved contraceptives, and they would continue to face minimal logistical and administrative obstacles." *Id.* (internal quotation marks omitted). Now, however, Petitioners challenge the accommodation this Court approved, and demand a *new* "accommodation" that will obstruct third parties from obtaining medication and treatments that their doctors have prescribed. And although these petitioners object to contraceptives, this Court's decision will have effects far beyond the facts of this case. If this Court rules that Petitioners can obstruct health-care services for third parties, future objectors could prevent children from obtaining critical, life-saving preventive care, including immunizations. This Court can—and should—prevent this threat to pediatric public health.

ARGUMENT

I. If the Court rules that the challenged accommodation violates RFRA, future plaintiffs could impede life-saving healthcare for children.

A. Many religious adherents object to medical services that are essential for children's health, including vaccination.

Vaccines are vital to public health, particularly for children. According to a study by the National Center for Immunization and Respiratory Diseases, "vaccination with 7 of the 12 routinely recommended childhood vaccines prevents an estimated 33,000 deaths and 14 million cases of disease in every birth cohort."[2] For children born in the United States between 1994 and 2013, "vaccination will prevent an estimated 322 million illnesses, 21 million hospitalizations, and 732,000 deaths over the course of their lifetimes."[3] And healthy children need vaccination so that the larger population can maintain "herd immunity" (also called "community immunity"), which is essential for preventing the spread of infectious and sometimes deadly diseases to

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[2] Sandra W. Roush & Trudy V. Murphy, *Historical Comparisons of Morbidity and Mortality for Vaccine-Preventable Diseases in the United States*, 298 JAMA 2155, 2160 (2007).

[3] Centers for Disease Control & Prevention, *Morbidity & Mortality Weekly Report* 352–55 (Apr. 25, 2014), *archived at* https://perma.cc/H78B-4655.

children who—for whatever reason—cannot receive vaccines.[4] But despite the importance of vaccines to children's health—and public health overall—some religious adherents object to their use.[5]

For example, some adherents object to vaccines for chicken pox, hepatitis A, hepatitis B, polio, and MMR (measles, mumps, and rubella) because those vaccines have an attenuated connection to fetal-tissue research conducted in the 1960s.[6] Indeed, just last year a mother sought (and received) an exemption from New York City's requirement that her child receive the MMR vaccine based on her professed belief that—because of the connection to fetal-tissue research—using the vaccine violated the tenets of the Russian Orthodox faith.[7] Similarly, in

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[4] *See* Paul Fine et al., *"Herd Immunity": A Rough Guide*, 52 CLINICAL INFECTIOUS DISEASES 911 (2011).

[5] *See, e.g.*, Liberty Counsel, *Compulsory Vaccinations Threaten Religious Freedom* (2007), *archived at* https://perma.cc/UQN4-XZK3 (argument by one of petitioners' *amici* asserting religious objections to rubella and hepatitis vaccines).

[6] Richard K. Zimmerman, *Ethical Analyses of Vaccines Grown in Human Cell Strains Derived from Abortion: Arguments and Internet Search*, 22 VACCINE 4238, 4238–44 (2004). To be clear, individual doses of these vaccines are not produced using fetal tissue, nor do they contain fetal tissue. Rather, the vaccines are grown in human cell cultures developed from two cell lines that trace back to two fetuses, both of which were legally aborted for unrelated medical reasons in the early 1960s. *See* The Children's Hospital of Philadelphia, *Vaccine Ingredients – Fetal Tissues*, *archived at* https://perma.cc/Y6KY-F7TG.

[7] Jennifer Gerson Uffalussy, *Anti-Vax, Meet Anti-Abortion: Woman Uses Fetal Tissue Link to Skirt Vaccine Law in NYC*, Yahoo! Health (Sept. 2, 2015), *archived at*

2014, a paramedic student brought suit to challenge his training program's vaccination requirement because vaccines derived from fetal tissue allegedly impinged on his Christian beliefs.[8] And the Catholic Church's Sacred Congregation of the Doctrine of the Faith has proclaimed that, while parents may vaccinate their children with vaccines derived from fetal-cell lines where there is no alternative and when necessary to protect against serious disease, the production, marketing, and use of such vaccines is considered to be "passive material cooperation" with evil.[9] The Congregation has further proclaimed that followers may "oppose by all means" those vaccines that do not yet have "morally acceptable alternatives," and abstain from using such vaccines if it can be done without causing significant risks to health.[10] And in fact, some Catholic groups have

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https://perma.cc/3VYW-EG49.

[8] Complaint (ECF No. 1-1), George v. Kankakee Cmty. College, No. 2:14-cv-02160 (C.D. Ill. July 3, 2014). The student brought a challenge under RFRA, but the district court dismissed his claim on the ground that RFRA does not apply to state action. *George v. Kankakee Cmty. College*, 2014 WL 6434152, at *4–5 (C.D. Ill. Nov. 17, 2014).

[9] Pontifica Academia Pro Vita, *Moral Reflections on Vaccines Prepared from Cells Derived from Aborted Human Foetuses* (June 9, 2005), *archived at* https://perma.cc/H5B5-UXUK; Catholic News Agency, "Vatican Condemns Vaccines Derived from Aborted Fetuses, Puts Onus on Pharma" (Jul. 19, 2005), *archived at* https://perma.cc/V479-UM9A (reporting that the "Vatican also supports parents who refuse to use the vaccines").

[10] *Id.*

done just that, by actively encouraging parents to refuse the objected-to vaccines.[11]

Another controversial vaccine is the vaccine against the human papillomavirus (HPV). Certain strains of HPV can cause a variety of cancers, most notably cervical cancer.[12] Each year, approximately 11,000 women in the United States are diagnosed with cervical cancer—and almost half that number die from it.[13] Because HPV is often transmitted through sexual contact, and because the HPV vaccine is most effective when administered before the patient comes in contact with the virus, medical experts and organizations—including the AAP—recommend that the HPV vaccine be administered at 11 or 12 years of age.[14] But because HPV can be transmitted sexually, some religious objectors steadfastly oppose the vaccine on the basis that it allegedly encourages teens to engage in premarital

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[11] *See* Fr. Phil Wolfe, *The Morality of Using Vaccines Derived from Fetal Tissue Cultures: A Few Considerations* (May 17, 2012), *archived at* https://perma.cc/4J28-676U (arguing that Catholics cannot "disclaim the origin of this vaccine," which is "evil").

[12] Centers for Disease Control & Prevention, *HPV Vaccine Information for Clinicians – Fact Sheet* (July 8, 2012), *archived at* https://perma.cc/9ANQ-FWWK.

[13] *Id.*

[14] *Id.*; American Academy of Pediatrics, *Recommended Childhood and Adolescent Immunization Schedule—United States, 2016* (Mar. 2016), *archived at* https://perma.cc/8QWH-LUQV.

sex, and that the correct way to limit transmission is through abstinence.[15]

Religious adherents do not limit their objections to the HPV vaccine or to vaccines derived from fetal-tissue research. For example, some religious adherents object to vaccines that contain bovine or porcine extracts, or blood fragments.[16] Still others object to vaccines generally because they believe that vaccines defile the body with foreign substances, like live viruses.[17]

Putting vaccines aside, some religious adherents also object to other medical services that are crucial for comprehensive pediatric health care. For example, gelatin, which is manufactured using tissue from animals—including pigs, cattle, and fish—is a common inactive ingredient in medication, particularly in "capsule shells."[18] Judaism, Islam, and Hinduism teach that ingestion of certain animal products is prohibited, and while some religious adherents allow exceptions for medical emergencies,[19] others object to the ingestion of all gelatin-containing medications.[20] As another

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[15] Joseph E. Balog, *The Moral Justification for a Compulsory Human Papillomavirus Vaccination Program*, 99 AM. J. PUB. HEALTH 616, 617 (2009).

[16] Tara M. Hoesli et al., *Effects of Religious and Personal Beliefs on Medication Regimen Design*, 34 ORTHOPEDICS 292, 292–95 (2011).

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] B. Vissamsetti et al., *Inadvertent Prescription of Gelatin-*

example, Jehovah's Witnesses prohibit the introduction of blood and its components into their bodies, and thus object to blood and plasma transfusions—even when a transfusion is necessary to save a child's life.[21] Christian Scientists believe that illness must be healed through prayer, and consider most medicines and procedures—aside from "mechanical" procedures, like setting bones—to be incompatible with their religious beliefs.[22] And the Church of Scientology opposes all psychiatric care, especially for children[23]—and even for severe psychotic disorders like schizophrenia.[24]

Containing Oral Medication: Its Acceptability to Patients, 88 J. OF POSTGRADUATE MED. 499–502 (2012).

[21] J. Lowell Dixon & M. Gene Smalley, *Jehovah's Witnesses: The Surgical/Ethical Challenge*, 246 JAMA 2471, 2471–72 (1981).

[22] Deborah Abbott ed., *The Christian Science Tradition: Religious Beliefs and Healthcare Decisions* 2–4 (2002), *archived at* https://perma.cc/29EH-2SZ6; Nathan A. Talbot, *The Position of the Christian Science Church*, 309 NEW ENG. J. MED. 1641, 1641–44 (1983).

[23] *See* Alisa Ulferts, *Scientologists Push Mental Health Law*, TAMPA BAY TIMES (Apr. 9, 2005), *archived at* https://perma.cc/RX8U-F4EG; Katharine Mieszkowski, *Scientology's War on Psychiatry*, SALON (July 1, 2005), *archived at* https://perma.cc/8T92-MGPA.

[24] *See* LAWRENCE WRIGHT, GOING CLEAR: SCIENTOLOGY, HOLLYWOOD, AND THE PRISON OF BELIEF 293–98 (1st ed. 2013); *see also* David Braithwaite, *Scientology Cited in Killings*, SYDNEY MORNING HERALD (July 10, 2007) (describing a case in which two Scientologists prevented their daughter from obtaining anti-psychotic medication; the young woman later had a psychotic episode and stabbed her father and 15-year-old sister to death), *archived at* https://perma.cc/PA24-27QT.

Of course, the First Amendment protects the sincerely held religious beliefs that undergird these objections to medical care, regardless of whether the beliefs are "acceptable, logical, consistent, or comprehensible to others," *Thomas v. Review Bd. of Indiana Emp't Sec. Div.*, 450 U.S. 707, 714 (1981), and regardless of whether they are "shared by all members of a religious sect," *id.* at 716. But at the same time, the law cannot allow individual religious adherents to obstruct life-saving treatments for children whose parents do not share the same beliefs. As further detailed below, Petitioners' reading of this Court's precedent would do just that.

B. There is no principled basis for distinguishing between religious objections to contraceptive coverage and religious objections to vaccine coverage.

Although Petitioners raise religious objections to contraceptive coverage, their interpretation of RFRA would require the same accommodation for religious objections to other medical treatments. According to Petitioners, RFRA protects employers from having to provide health plans that cover contraceptives if those contraceptives conflict with their sincerely held religious beliefs. Pet. Br. in No. 15-35 at 41–42; Pet. Br. in No. 14-1418 at 29.[25] Petitioners also argue that when an employer objects

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[25] Under *Hobby Lobby*, RFRA would extend the same protection to both religious nonprofits and for-profit, closely held corporations. *See* 134 S. Ct. at 2775.

to such contraceptive coverage based on a sincerely held religious belief, the government must accommodate that objection by providing the coverage in a way that is totally disassociated from the employer's health plan. Pet. Br. in No. 15-35 at 72–78; Pet. Br. in No. 14-1418 at 73–82.

Petitioners' reasoning would seem to require an identical accommodation for religious objections to vaccinations, because there is no principled basis for this or any other court to discriminate between religious objections to the contraceptive requirement and religious objections to requirements for other preventive care. Obviously, the court cannot favor Petitioners' religious objections over other objections on the grounds that an objection to contraceptives is more "acceptable, logical, consistent, or comprehensible" than an objection to vaccines. *Thomas*, 450 U.S. at 714. And both objections are to the same provision in the Affordable Care Act: The statutory subsection that requires coverage of cost-free contraceptive care also requires cost-free coverage for any immunizations that are recommended by the Director of the Centers for Disease Control and Prevention ("CDC"). 42 U.S.C. § 300gg–13(a)(2).[26] As provided in the implementing

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[26] The same section also requires cost-free coverage of preventive care and screening for infants, children, and adolescents in accordance with "comprehensive guidelines" supported by the Health Resources and Services Administration. 42 U.S.C. § 300gg–13(a)(3). Those "comprehensive guidelines," in turn, are developed by the AAP, which publishes them in a document called *Bright Futures*. *See* J.F. Hagan et al., eds., *Bright Futures: Guidelines for Health Supervision of Infants, Children and Adolescents* (3d ed. 2008),

regulations, the CDC Director recommends an immunization if it is listed on the CDC's Immunization Schedules, which the AAP co-authors.[27] 26 C.F.R. § 54.9815–2713T; 29 C.F.R. § 2590.715–2713; 45 C.F.R. § 147.130. At present, the Immunization Schedules for infants, children, preteens, and teens each list vaccinations that are objectionable to certain religious traditions, including vaccines against varicella (chicken pox), hepatitis A, hepatitis B, MMR, polio, and HPV.[28] If, as Petitioners argue, RFRA entitles an employer to totally exempt itself, its health plan, and its health-plan administrator from the contraceptive-coverage requirement, then RFRA would presumably allow an employer to do the same for the immunization-coverage requirement.

To date, less than two years after this Court's *Hobby Lobby* decision, no flood of employers has sought exemptions to the ACA's immunization-coverage requirement, but the threat is no less real. *Cf. Hobby Lobby*, 134 S. Ct. at 2783. Employers will likely decide whether to seek such exemptions based on the Court's decision in this case. If this Court decides in favor of Petitioners, it will encourage employers to exclude other coverage from their health plans, and it will encourage employers to object to any opt-out accommodation—even one that

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archived at https://perma.cc/6QUG-KLSW.

[27] *See* American Academy of Pediatrics, *supra* note 14.

[28] *See* Centers for Disease Control & Prevention, *For Everyone: Easy-to-Read Schedules* (Jan. 26, 2016), *archived at* https://perma.cc/U4AM-LQ58.

simply requires the objector to write a letter to its insurance-plan administrator or to HHS. In fact, RFRA-based objections to all sorts of laws proliferated in the wake of this Court's decision in *Hobby Lobby*. For example, *Hobby Lobby* was cited in support of Pacific Lutheran University's request for an exemption from national labor laws.[29] Similarly, a member of the Fundamentalist Church of the Latter Day Saints sought—and won—a religious exemption that allowed him to avoid testifying in a federal investigation into the church's alleged violations of child-labor laws. *Perez v. Paragon Contractors, Corp.*, 2014 WL 4628572 (D. Utah Sept. 11, 2014). In light of these attempts to seek religious exemptions from generally applicable laws, it is likely that religious adherents will have similar objections to the ACA's immunization coverage requirement.

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[29] *See* Notice of Supplemental Authority and Supplemental Brief of *Amicus Curiae* National Right to Work Legal Defense and Education Foundation, Inc. Regarding *Burwell v. Hobby Lobby Store, Inc.*, Pac. Lutheran Univ. and Serv. Emps. Int'l Union, Local 925, No. 19-RC-102521 (N.L.R.B. Sept. 24, 2014), at 5 (arguing that, "[l]ike the substantial burden found in Hobby Lobby, the [National Labor Relations] Board forces the University to violate its conscience by bargaining in good faith on promoting the Union's pro-abortion agenda through the collective bargaining agreement"; and that "[j]ust as all the exceptions to the HHS mandate demonstrated that the least restrictive alternative was not in place, so the massive exceptions to collective bargaining under the NLRA show that mandating collective bargaining for the University is not the least restrictive alternative").

C. The only alternatives to the government's existing accommodation will increase costs and administrative burdens on families, making it harder for them to obtain life-saving preventive care for their children.

Because there is no principled basis to distinguish religious objections to the rule requiring contraceptive coverage from religious objections to the rule requiring immunization coverage, employers objecting to vaccine coverage will presumably demand the same accommodation offered here—the option to submit a self-certification to either the health-plan administrator or to HHS. *See Hobby Lobby*, 134 S. Ct. at 2781–82. Perhaps the Court will be able to distinguish a RFRA challenge to vaccine coverage from the RFRA challenge to contraceptive coverage in this case. *See id.* at 2783 (noting that "[o]ther coverage requirements, such as immunizations, may be supported by different interests . . . and may involve different arguments about the least restrictive means of providing them"); *id.* at 2787 (Kennedy, J., concurring). But if the vaccine objection cannot be distinguished from the contraceptive objection, then the Court's ruling in this case will necessarily decide whether future plaintiffs can—through their objection—obstruct immunization coverage for third parties.

If the Court rules in favor of the government here, then even if future religious objectors are permitted to opt out of providing coverage for immunizations, parents' health plans must continue to provide that coverage without imposing any

additional cost or burden on families. But if the Court rules in favor of Petitioners, then even the self-certification accommodation would violate RFRA—and the government would have to replace that accommodation with an alternative that makes it significantly harder for families to obtain immunization coverage for their children. Indeed, each of the alternatives that Petitioners propose to replace the existing automatic coverage mechanism would impose heavy administrative burdens and costs on families. For example, Petitioners suggest that employees or their dependents can find and purchase an individual health plan on an insurance exchange, but that would require significant investments of time and research to select the appropriate plan—assuming a comparable individual plan even exists, which is never guaranteed. *See* Pet. Br. in No. 15-35 at 72–75; Pet. Br. in No. 14-1418 at 75–79. And it is extremely unlikely that many parents would expend that time and money—and give up generous premium subsidies offered by employers—to purchase an exchange plan that covers only a few additional services. The burden is further compounded for families that would need to apply for a government subsidy to afford the plans offered on the exchange—again, assuming a sufficient subsidy is even available.[30] Likewise, Petitioners suggest that "tax credits" are the solution, but that would place the onus on families to either

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[30] Tax credits for insurance premiums are generally *not* available to an employee's family if his or her employer offers individual (i.e., non-family) coverage that meets an affordability standard—even if the employee would otherwise qualify for a subsidy based on income. *See* 26 C.F.R. § 1.36B-2.

navigate the byzantine tax code themselves or pay a professional to do it for them. *See* Pet. Br. in No. 14-1418 at 81–82. This alternative would also likely be unworkable for low-income families who either cannot afford to hire a tax professional, or would derive no tax benefit due to their particular tax situation.

If religious objectors are allowed to place additional burdens on families that need comprehensive immunization coverage, then vaccination rates will fall and the spread of infectious (and sometimes deadly) diseases will rise. Public-health experts have shown that even a minor increase in either administrative or financial burdens can significantly deter patients from receiving important medical care. For example, a 2010 study found that patients who had to opt in to a free vaccination program were 36% less likely to receive the vaccine compared to patients who were automatically enrolled, suggesting that even minor logistical barriers will result in fewer families signing up for immunization coverage and vaccinating their children.[31] And other studies bear this out, showing that when bureaucratic obstacles and other factors make vaccinations inconvenient, patients are less likely to obtain critical vaccines.[32]

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[31] Gretchen B. Chapman et al., *Opting In vs Opting Out of Influenza Vaccination*, 304 JAMA 43, 43–44 (2010).

[32] Felicity T. Cutts et al., *Causes of Low Preschool Immunization Coverage in the United States*, 13 ANN. REV. PUB. HEALTH 385, 389 (1992).

Lower vaccination rates will lead to disastrous consequences for children's health. Indeed, the recent outbreak at the Disneyland amusement park in California vividly shows what happens when fewer children receive vaccines and "herd immunity" is compromised. Between December 2014 and January 2015, 39 people—many of them children—were infected with measles after visiting Disneyland.[33] The infection rapidly spread from those individuals to others, and within weeks infected at least 125 people across several other states.[34] Of those victims, 49 were unvaccinated, and 12 were infants too young to be vaccinated.[35] Although the source of the original infection is unknown, it is believed to have been a single individual who, after contracting the virus overseas, visited Disneyland and transmitted the infection to other visitors.[36] The Disneyland outbreak shows the importance of ensuring maximal immunization coverage across the population: Without comprehensive protection, one infected individual can sicken hundreds or more.[37]

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[33] CDC, *Measles Outbreak – California, December 2014 – February 2015* (Feb. 20, 2015), *archived at* https://perma.cc/XC3S-BBLV.

[34] *Id.*

[35] *Id.*

[36] Nicholas Bakalar, *What Travelers Need to Know About Measles*, N.Y. TIMES (Feb. 3, 2015), *archived at* https://perma.cc/YNV7-BJCZ.

[37] Measles in particular is one of the most infectious viruses known to medicine—it can remain suspended in the air for up to two hours, and can infect a person entering a room even after an infectious person has left. CDC, *Measles (Rubeola)* (Sept. 10,

Although government benefits like the federal Vaccines for Children ("VCF") program are an important component of a comprehensive immunization strategy, they are no substitute for private health insurance. Indeed, studies show that VCF-eligible children are vaccinated at a much lower rate than privately insured children due to various barriers to access.[38] For example, although children whose health plans do not cover vaccines can obtain them through VCF, they must travel to certain federally qualified health centers ("FQHCs") or rural health clinics ("RHCs") in order to do so. *Id.* § 1396s(b)(2)(A)(iii). Thus, parents cannot have their children vaccinated during an appointment with their primary caregiver, and instead have to make a separate trip to a different facility (and fill out additional forms) to obtain critical vaccines. Studies show that these barriers to access, and in particular the need to make special trips and arrangements to obtain vaccines, make it significantly less likely that children will be vaccinated.[39] By contrast, when a parent's employer-sponsored health plan includes immunization coverage, families face minimal or no

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2015), *archived at* https://perma.cc/FD3N-EEQN.

[38] Philip J. Smith et al., *Vaccination Coverage Among U.S. Children Aged 19–35 Months Entitled by the Vaccines for Children Program, 2009*, 126 PUB. HEALTH REP. 109 (2011 Supplement 2).

[39] Philip J. Smith et al., *The Association Between Having a Medical Home and Vaccination Coverage Among Children Eligible for the Vaccines for Children Program*, 116 PEDIATRICS 130 (2005).

barriers to obtaining vaccinations for their children, and children are vaccinated at a much higher rate.[40]

Because maximal immunization rates and "herd immunity" are necessary for preventing the spread of potentially deadly childhood diseases, it is essential that access to vaccines be as convenient and easy for families as possible. The government's accommodation for religious objections accomplishes that goal by ensuring that, even if a parent's employer declines to cover vaccinations, coverage will continue uninterrupted and without imposing administrative or economic burdens that would hinder families' access to that vital preventive care.

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[40] Smith et al., *supra* note 38.

CONCLUSION

For the foregoing reasons, as well as those in the Government's brief, Amicus respectfully requests that this Court affirm the decisions of the courts below.

Respectfully submitted,

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